

IN THE SUPREME COURT OF THE STATE OF DELAWARE

DEVON CLARK,	§	
	§	No. 359, 2009
Defendant Below,	§	
Appellant,	§	Court Below—Superior Court
	§	of the State of Delaware in and
v.	§	for New Castle County
	§	
STATE OF DELAWARE,	§	
	§	Cr. ID Nos. 0806025325
Plaintiff Below,	§	0902000788
Appellee.	§	

Submitted: September 22, 2009

Decided: December 9, 2009

Before **HOLLAND, BERGER** and **JACOBS**, Justices.

ORDER

This 9th day of December 2009, upon consideration of the appellant's brief filed pursuant to Supreme Court Rule 26 (c), his attorney's motion to withdraw, and the State's response thereto, it appears to the Court that:

(1) On April 9, 2009, the appellant, Devon Clark, pled guilty to Robbery in the Second Degree and Criminal Impersonation. On June 12, 2009, the Superior Court declared Clark to be a habitual offender and sentenced him to fifteen years at Level V for Robbery in the Second Degree

and to one year at Level V suspended for probation for Criminal Impersonation.¹ This is Clark's direct appeal.

(2) On appeal, Clark's defense counsel ("Counsel") has filed a brief and a motion to withdraw pursuant to Supreme Court Rule 26(c) ("Rule 26(c)"). The standard and scope of review of a motion to withdraw and an accompanying brief under Rule 26(c) is two-fold. First, the Court must be satisfied that Counsel has made a conscientious examination of the record and the law for claims that could arguably support the appeal.² Second, the Court must conduct its own review of the record and determine whether the appeal is so devoid of at least arguably appealable issues that it can be decided without an adversary presentation.³

(3) Counsel asserts that, based upon a careful and complete examination of the record, there are no arguably appealable issues. Counsel states that he provided Clark with a copy of the motion to withdraw and the accompanying brief and appendix. Counsel also advised Clark that he had a right to supplement Counsel's presentation. Clark responded with a written submission raising issues concerning his sentencing. The State has

¹ Del. Code Ann. tit. 11, § 4214(a) (2007).

² *Penson v. Ohio*, 488 U.S. 75, 83 (1988); *McCoy v. Court of Appeals of Wisconsin*, 486 U.S. 429, 442 (1988); *Anders v. California*, 386 U.S. 738, 744 (1967).

³ *Id.*

responded to Clark's submission as well as the position taken by Counsel and has moved to affirm the Superior Court judgment.

(4) In his written submission, Clark claims that there were defects in the proceedings leading to his sentencing as a habitual offender. Specifically, Clark alleges that the State failed to file a habitual offender motion, and that the Superior Court failed to conduct a habitual offender hearing.

(5) Clark's claims are belied by the record. Contrary to Clark's claims, the record reflects that the State filed a habitual offender motion on May 22, 2009, and that the Superior Court addressed the motion as well as Clark's habitual offender status prior to sentencing on June 12, 2009. More to the point, however, the record reflects that Clark agreed in his written plea agreement "to sentencing pursuant to 11 Del. C. [§] 4214(a) as [a] habitual offender," and that he confirmed the agreement and his understanding of it during the plea colloquy and at sentencing.

(6) The Court has reviewed the record carefully and has concluded that Clark's appeal is wholly without merit and devoid of any arguably appealable issue. We also are satisfied that Counsel made a conscientious effort to examine the record and the law and properly determined that Clark could not raise a meritorious claim in this appeal.

NOW, THEREFORE, IT IS ORDERED that the State's motion to affirm is GRANTED. The judgment of the Superior Court is AFFIRMED. The motion to withdraw is moot.

BY THE COURT:

/s/ Carolyn Berger
Justice